HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

W.P. Nos.25275, 25276, 25277, 25278,
25279, 25280 and 25281 of 1999
and
C.M.A. Nos. 2065, 2066, 2067, 2068,
2069, 2070, 2071, 2072, 2073, 2074,
2075, 2076, 2080, 3436 of 2000;
1292, 2125, 2405, 2786, 2838 of 2001;
532, 1187, 2519, 2520, 2521, 2522 of 2002;
and 364 and 1927 of 2003

W.P. No.25275 of 1999:

Between:
Aditya Spinners Ltd., rep. by its Managing
Director R. Shiv Kumar, Hyderabad and another .. Petitioners

and

State of Andhra Pradesh rep. by its
Secretary, Department of Energy,
Secretariat, Hyderabad and two others .. Respondents

W.P. No.25276 of 1999:

Between:
PSM Spinning Ltd., rep. by its Managing
Director C.K. Rao, Hyderabad and another .. Petitioners

and

State of Andhra Pradesh rep. by its
Secretary, Department of Energy,
Secretariat, Hyderabad and two others .. Respondents

W.P. No.25277 of 1999:

Between:
GTN Textiles Ltd., rep. by its Managing
Director M.K. Patodia, Hyderabad and another .. Petitioners

and

State of Andhra Pradesh rep. by its
Secretary, Department of Energy,
Secretariat, Hyderabad and two others .. Respondents

W.P. No.25278 of 1999:

Between:
Suryalakshmi Cotton Mills Ltd. rep. by its
Additional Managing Director U.K. Agarwal,
Secunderabad and another .. Petitioners

and

State of Andhra Pradesh rep. by its
Secretary, Department of Energy,
Secretariat, Hyderabad and two others .. Respondents

W.P. No.25279 of 1999:

Between:
Suryajyoti Spinning Mills Ltd., rep. by its
Executive Director Arun Kumar Agarwal,
Hyderabad and another .. Petitioners

and

State of Andhra Pradesh rep. by its
Secretary, Department of Energy,
Secretariat, Hyderabad and two others .. Respondents

W.P. No.25280 of 1999:

Between:
Suryavamshi Spinning Mills Ltd., rep., by its Joint
Managing Director, Hyderabad and another .. Petitioners

and

State of Andhra Pradesh rep. by its
Secretary, Department of Energy,
Secretariat, Hyderabad and two others .. Respondents

W.P. No.25281 of 1999:

Between:

Suryalata Spinning Mills Ltd., rep. by its
Managing Director Vithaldas Agarwal,
Hyderabad and another .. Petitioners

and

State of Andhra Pradesh rep. by its
Secretary, Department of Energy,
Secretariat, Hyderabad and two others .. Respondents

C.M.A. No.2065 of 2000

Between:

GTN Textiles Ltd., rep. by its
Managing Director, Hyderabad .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another .. Respondents

C.M.A. No.2066 of 2000

Between:

PSM Spinning Ltd., rep. by its
Managing Director, Hyderabad .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another ..
Respondents

C.M.A. No.2067of 2000

Between:

PSM Spinning Ltd., rep. by is
Managing Director, Hyderabad .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another .. Respondents

C.M.A. No.2068 of 2000

Between:
Suryalakshmi Cotton Mills Ltd., rep., its
Additional Managing Director, Secunderabad .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another ..
Respondents

C.M.A. No.2069 of 2000

Between:
Suryalakshmi Cotton Mills Ltd., rep. by its
Additional Managing Director, Secunderabad .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another ..
Respondents

C.M.A. No.2070 of 2000

Between:
GTN Textiles Ltd., rep. by its
Managing Director, Hyderabad .. Appellant

and

Andhra Pradesh Electricity Regulatory

Commission rep. by its Chairman,
Hyderabad and another ..
Respondents

C.M.A. No.2071 of 2000

Between:
GTN Textiles Ltd., rep. by its
Managing Director, Hyderabad .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another ..
Respondents

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C.M.A. No.2072 of 2000

Between:
GTN Textiles Ltd., rep. by its
Managing Director, Hyderabad .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another .. Respondents

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C.M.A. No.2073 of 2000

Between:
GTN Textiles Ltd., rep. by its
Managing Director, Hyderabad .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another .. Respondents

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C.M.A. No.2074 of 2000

Between:
GTN Textiles Ltd., rep. by its
Managing Director, Hyderabad .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another .. Respondents

C.M.A. No.2075 of 2000

Between:

Perfect Knitters Ltd., rep. by its
Director, Hyderabad .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another .. Respondents

C.M.A. No.2076 of 2000

Between:

GTN Exports Ltd., rep. by its
Director, Hyderabad .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another .. Respondents

C.M.A. No.2080 of 2000

Between:

Geetean Viniyog Ltd., rep. by its
Director, Hyderabad .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another .. Respondents

C.M.A. No.3436 of 2000

Between:

Sree Akkamamba Textiles Ltd., rep. by its
Executive Director, Tanuku .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another .. Respondents

C.M.A. No.1292 of 2001

Between:

Gujarat Ambuja Cements Ltd., rep. by its
Assistant Vice President, Hyderabad .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and two others .. Respondents

C.M.A. No.2125 of 2001

Between:

Precot Mills Ltd., rep. by its
Manager, Hindupur, Anantpur .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another .. Respondents

C.M.A. No.2405 of 2001

Between:

Suryavamshi Spinning Mills Ltd., rep., by
Its Joint Managing Director, Hyderabad .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another .. Respondents

C.M.A. No.2786 of 2001

Between:

Suryavamshi Spinning Mills Ltd., rep.,
By its Joint Managing Director, Hyderabad .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another .. Respondents

C.M.A. No.2838 of 2001

Between:

Precot Mills Ltd., rep. by its Manager,
Hindupur, Anantapur District .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another .. Respondents

C.M.A. No.532 of 2002

Between:

Kesoram Cement rep. by its Joint President,
Basantnagar, Karimnagar District .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another .. Respondents

C.M.A. No.1187 of 2002

Between:

Suryalata Spinning Mills Ltd., rep. by its
Joint Managing Director, Hyderabad .. Appellant

and

Andhra Pradesh Electricity Regulatory

Commission rep. by its Chairman,
Hyderabad and another .. Respondents

C.M.A. No.2519 of 2002

Between:

Sri Dhanalakshmi Cotton & Rice Mills Pvt., Ltd.,
Ganapavaram rep. by its Managing Director .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another .. Respondents

C.M.A. No.2520 of 2002

Between:

Sri Dhanalakshmi Cotton & Rice Mills Pvt. Ltd.,
Ganapavaram rep. by its Managing Director .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another .. Respondents

C.M.A. No.2521 of 2002

Between:

Sri Dhanalakshmi Cotton & Rice Mills Pvt., Ltd.,
Ganapavaram, rep., by its Managing Director .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another .. Respondents

C.M.A. No.2522 of 2002

Between:

Sri Dhanalakshmi Cotton & Rice Mills Pvt., Ltd.,
Ganapavaram rep. by its Managing Director .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another .. Respondents

C.M.A. No.364 of 2003

Between:
Makhanlal Rajkumar Cotton Ltd.,
Adilabad, rep. by its Manager .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another .. Respondents

C.M.A. No.1927 of 2003

Between:
Kesoram Cement, rep. by its Joint
President, Bnasantnagar, Karimnagar Dist. .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another .. Respondents

DATE: -06-2007

COMMON ORDER: (per Hon'ble Sri Justice G. Bhavani Prasad)

The impact of the Electricity Act, 2003 on this batch of writ petitions and civil miscellaneous appeals is common for all the matters and hence, they are being heard and decided together at the request of the learned counsel for both parties.

The constitutionality and legality of the Practice Direction No.1 dated 08-10-1999 issued by the Andhra Pradesh Electricity Regulatory Commission in respect of captive power generation is under challenge in the batch of writ petitions. The different orders passed by the Andhra Pradesh Electricity Regulatory Commission on the applications for consent or renewal of consent for new or additional captive power plants or existing power plants respectively are the subject matter of the statutory appeals in the batch of civil miscellaneous appeals.

Sri K. Gopal Choudary, learned counsel for the petitioners/appellants has submitted in all fairness that the change in law made the matters practically infructuous, with which the other learned counsel appearing for other parties in the matters agreed in equal fairness.

Captive power plants and captive power generation were regulated by Section 44 of the Electricity (Supply) Act, 1948 which required the previous consent in writing of the Andhra Pradesh State Electricity Board, to establish or acquire a new generating station or to extend or replace any major unit or plant or works pertaining to the generation of electricity in a generating station in accordance with the procedure laid down by that provision.

The Andhra Pradesh Electricity Reform Act, 1998, which came into force with effect from 01-02-1999, provided in Section

21 (3) for obtaining the said consent from the Andhra Pradesh Electricity Regulatory Commission instead of the Andhra Pradesh State Electricity Board.

As a transitional measure, the Transmission Corporation of Andhra Pradesh Limited was empowered to exercise the powers and discharge the responsibilities vested in the Andhra Pradesh State Electricity Board under Section 44 of the Electricity (Supply) Act, 1948 till such time the Andhra Pradesh Electricity Regulatory Commission is constituted, under G.O. Ms. No.57, Energy (Power III), dated 27-03-1999 in exercise of the powers conferred under Section 23 (3) read with Section 51 (1) of the Andhra Pradesh Electricity Reform Act, 1998. On constitution of the Andhra Pradesh Electricity Regulatory Commission, the said powers and responsibilities stood vested in the Commission as per Section 21 (3) of the Andhra Pradesh Electricity Reform Act, 1998.

The Andhra Pradesh Electricity Regulatory Commission issued Practice Directions on procedure for obtaining consent of the Commission for captive power plants in APERC No.1, dated 08-10-1999 in exercise of the powers conferred by Sections 21 and 54 of the Andhra Pradesh Electricity Reform Act, 1998. These Practice Directions were challenged in the batch of writ petitions as unconstitutional and ultra vires of Section 44 of the Electricity (Supply) Act, 1948.

As per the said Practice Directions, applications were filed before the Commission by different applicants for consent or renewal of consent for new or additional captive power plants or existing captive power plants respectively. The orders of the Commission thereon are the subject of challenge in the batch of civil miscellaneous appeals by way of statutory appeals provided by Section 39 of the Andhra Pradesh Electricity Reform Act, 1998.

In the meanwhile, the Electricity Act, 2003 came into force with effect from 10-06-2003 under which the Electricity (Supply) Act, 1948 stood repealed, save as otherwise provided in the Electricity Act, 2003. The provisions of the Andhra Pradesh Electricity Reform Act, 1998 specified in the Schedule to the Electricity Act, 2003 remained unaffected only to the extent of any provisions not inconsistent with the provisions of the Electricity Act, 2003 as specified in Section 185 (3) thereof.

Section 9 of the Electricity Act, 2003 dealing with captive generation, provided specifically for liberty to a person to construct, maintain or operate a captive generating plant and dedicated transmission lines subject to the other details specified therein. Thus, Section 9 of the Electricity Act, 2003 obliterated any restrictions on captive generation plants or captive generation hitherto imposed by Section 44 of the Electricity (Supply) Act, 1948 read with Section 21 (3) of the Andhra Pradesh Electricity Reform Act, 1998.

However, the State Government in exercise of the transitional power under Section 172 (d) of the Electricity Act, 2003 issued G.O. Ms. No.90, Energy (PR.III) dated 04-08-2003 declaring that the provisions contained in Section 9 of the Electricity Act, 2003 shall not apply to the State of Andhra Pradesh during the period from
10-06-2003 to 09-12-2003. With effect from 10-12-2003, such disapplication ceased to be in force. Sri K. Gopal Choudary, learned counsel, in fact, brought to the notice of the Court a Press Release issued by the Andhra Pradesh Electricity Regulatory

Commission informing all the consumers in the State that from 10-12-2003 onwards, the consumers are not required to obtain consent/permission from the Commission for installing captive power plants/generators of any capacity for their use and that all those who are already having captive power plants and valid permission up to/beyond 09-12-2003 are not required to seek renewal permission. This is, however, subject to fulfilling any other conditions stipulated in any other regulations in force issued under Electricity Laws or any other Law in force.

Captive generating plants already in existence by the time of filing of the writ petitions and civil miscellaneous appeals continued to operate by virtue of the interim orders of status quo granted by this Court and since 10-12-2003 any restrictions having been erased, they can continue to operate subject to Section 9 of the Electricity Act, 2003 and any other regulations or provisions in force stipulating any other conditions. However, the Practice Directions under challenge in the writ petitions and the orders under challenge in the civil miscellaneous appeals obviously became infructuous, superfluous and redundant due to change in law during the pendency of these proceedings. Going into the merits of the disputes, thus, became unnecessary due to such change in law, the effect of which is applicable to the matters in dispute herein. Hence, without indulging in any futile academic exercise to determine the matters on merits, these matters have to be disposed of as infructuous and in the circumstances, without costs.

In the result, all the writ petitions and civil miscellaneous appeals are dismissed as infructuous without costs without any expression of opinion on merits.

B. PRAKASH RAO, J

G. BHAVANI PRASAD, J

Date: -06-2007

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